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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,180	10/16/2001	Pei K. Chang	2105.2135	7984

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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,180

Applicant(s)

CHANG ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 and 84-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-82, 84-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gandhi.

The claims are rejected for the reasons of record cited in the last office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-12, 14-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gandhi.

The claims are rejected for the reasons of record cited in the last office action.

Claims 38-82, 84-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1-37 above, and further in view of Braun et al. (4,830,862) and Burkes et al. (5,401,524).

The claims are rejected for the reasons of record cited in the last office action.

ARGUMENTS

Applicant's arguments filed 9-23-04 have been fully considered but they are not persuasive. Applicants argue that Gandhi does not recognize the importance of adding a sweetener to the beverage concentrate after a stable solution of calcium and the acids is made. However, Gandhi distinctly discloses mixing "calcium carbonate with lactic acid with vigorous mixing to get a clear solution" which forms calcium lactate (col. 8, lines 45-55 and col. 5, lines 5-14). Then guar gum fiber is added with high speed mixing to get a lump free solution, then citric acid (food acid) is added which is used as a buffering agent (abstract and col. 3, lines 35-40). Then aspartame and acesulpham K is added (col. 8, lines 45-55). Therefore, the calcium lactate had already been formed when the sweetener was added, eliminating any problem of loss off sweetness as argued.

Applicants argue that particular calcium sources such as calcium chloride and at least two calcium salts chosen from monocalcium phosphate, calcium hydroxide and calcium carbonate are required. This is not seen in the independent claims which require "one or more calcium salts except claim 38. Inorganic mineral carbonate, bicarbonates, hydroxides and oxides can be used (col. 11, lines 5-10).

Claim 38 does require specifically calcium chloride and two calcium salts. However, Braun discloses that calcium carbonate and calcium sulfate or calcium hydroxide (two calcium salts) and "preferably including calcium chloride" are particularly preferred calcium sources (col. 5, lines 13-20).

Applicants argue that Burkes contains other ingredients, even though the claims do not exclude the ingredients. Burkes is used for the teaching that calcium chloride

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and the other claimed calcium sources can be used (col. 5, lines 25-40, col. 9, lines 33-45) in combination with Gandhi. No connection is seen between the use of the artificial sweeteners and calcium chloride at this time and use of the claimed calcium sources has been shown.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

11-4-04 hp


HELEN PRATT
PRIMARY EXAMINER